

Opening Statement

Representative Elijah E. Cummings, D-Maryland

Subcommittee on Federal Workforce and Agency Organization Hearing: "Justice
Delayed is Justice Denied: A Case for a Federal Employees Appeal Court."

Committee on Government Reform
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Mr. Chairman,

Thank you for holding this critically important hearing to evaluate a restructuring proposal for the federal employee appeals process. For over two decades, five distinct agencies have admirably worked to ensure that federal employees have an appropriate forum to resolve their claims of unfair or unlawful treatment that occurs in the workplace.

As it now stands, agency involvement of the federal employee appeals system includes: the Merit System Protection Board (MSPB), which hears individual appeals regarding agency adverse actions; the Office of Personnel Management (OPM), which is charged with administering the federal personnel system; the Office of Special Counsel (OSC), which investigates and prosecutes specialized cases with an focus on protecting whistleblowers; the Equal Employment Opportunity Commission

(EEOC) enforces the right of equal employment opportunity by hearing cases concerning discrimination; and finally, the Federal Labor Relations Authority (FLRA) adjudicates disagreements between agencies and unions.

Today's hearing presents us with the opportunity to discuss a proposal by the Senior Executive Association (SEA) to streamline the federal employee appeals system with the creation of a Federal Employee Appeals Court. Specifically, the proposal calls for a single forum that would merge the appeals functions currently adjudicated by MSPB, OPM, OSC, EEOC, and FLRA into what could be considered a "super-agency." As the testimony of William Bransford articulates, the purpose of this new entity is to "provide a simple and expeditious mechanism, resulting in protection of the merit system by resolving employee concerns with relative speed, impartiality, and fairness, while preserving all employee appeals rights."

In principle, I am sure we can all agree that we best honor our civil servants by having a federal employee appeals system that provides a just, timely, and thorough resolution of employee grievances. Further, I am sure we can all agree that the current appeals system is not perfect and could benefit from some efforts to improve its effectiveness and efficiency. I am especially

troubled by the lack of timeliness in the resolution of some mixed cases where there is a jurisdictional overlap between EEOC and MSPB and the ability to continuously “bounce” an appeal in such a case for additional review to another adjudicative forum.

However, I am not 100% convinced that the SEA proposal for a Federal Employee Appeals Court is the best course of action. At this point, it seems that the five agencies at the center of the federal employee appeals system are able to sufficiently fulfill their unique missions.

The challenges that confront us seem largely concentrated to the extraordinary delays and disarray associated with mixed cases. With that said, wholesale restructuring of the arbitration system seems unwarranted. John Gage of the AFL-CIO wisely stated in his testimony that “in particular, there is no need to create a system which deprives federal employees of their fundamental civil right to challenge discriminatory employment decisions, while permitting private sector and other public sector employees to file cases in federal courts, state courts, and before state administrative agencies as they can do now.”

With that said, EEOC’s field restructuring plan that is typified by its calls for a reduction of offices and staff seems particularly unwise. No one wins if EEOC is incapable of

enforcing discrimination laws and if it is inadequately staffed to decrease backlogs and delays. Moreover, it seems appropriate that in focusing on the specific challenges before us that we look within the current system to determine how any perceived or actual inefficiencies associated with mixed cases can be best addressed.

I yield back the balance of my time and look forward to the testimony of today's witnesses regarding SEA's proposal.